

Appendix 1

Acquisition Strategy



City Centre Road

30/11/2017

1. Introduction

1. This report sets out the Land Acquisition Strategy, which will be used in order to facilitate the construction of the City Centre Road.
- 1.2 The strategy sets out the various methods of land acquisition available to the City Council in order to facilitate the City Centre Road, and will provide some suggestions as to the most appropriate method of acquisition in varying circumstances.
- 1.3 Whilst the City Council will work to acquire all necessary property interests by agreement, this land acquisition strategy includes the potential use of compulsory purchase powers.

2. Acquisition Options

2. There are three principal options for acquisition available to the City Council to ensure vacant possession of the site for the construction of the City Centre Road, these are:

- Acquisition by agreement
- Determination of leasehold interests using Landlord and Tenant powers
- Appropriation
- Compulsory Purchase

- 2.1 Each method has its benefits and it is envisaged that they will all be used in combination to ensure that vacant possession of the site is delivered at the required time in a cost-effective manner.

Acquisition by Agreement

- 2.2 This option provides the acquiring body with the first opportunity to secure the necessary agreement with parties owning interests in required land.

- 2.3 The benefits to the property owner are that it allows for a greater level of flexibility between parties on timing and consideration. The ability of affected parties to have sufficient time to identify, secure and relocate to alternative premises often allows for the mitigation of potential compensation. One of the benefits to the acquiring authority is achieving early certainty in terms of both timing and cost.

- 2.4 Clearly this method is only effective where there is a willing seller. Where an owner of a property interest does not wish to sell, or has an unrealistic expectation of terms, it is unlikely that any acquisition by agreement will be achieved.

Landlord and Tenant

- 2.5 Where the City Council owns a superior interest, it may be possible to acquire inferior leasehold interests using the landlord and tenant powers. The ability for the City Council to do this will depend on the specific wording within the leases.

- 2.6 The main benefit to the City Council undertaking land assembly is that compensation liabilities can be significantly reduced in line with either the agreed terms in the lease or the statutory compensation of multiples of rateable value under Landlord & Tenant legislation.

- 2.7 Limitations of this method include issues of both timing and certainty. Unless a lease contains specific provision for termination for construction of the road the City Council must wait until expiry of the term of the lease.

Appropriation

- 2.8 Section 122 of the Local Government Act 1972 (Appropriation of land by principal councils) gives the City Council power to appropriate land held by it for any purpose to another purpose.

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- 2.9 Where land is acquired or appropriated by the City Council for the purposes of the construction of the City Centre Road, it may take advantage of the provisions of section 203 of the Housing and Planning Act 2016, enabling restrictive covenants and other adverse matters to be over-ridden.
- 2.10 The interests and rights that can be over-ridden include any easement, liberty, privilege, right or advantage annexed to land or adversely affecting other land, including any natural right of support.
- 2.11 The provisions are broader than those found in the former section 237 of the Town and Country Planning Act 1990 and can apply where land could be acquired compulsorily. There must, however, be planning consent for the building or maintenance work or use involved, and the building or maintenance work or the use must be for purposes related to the purposes for which the land was vested, acquired or appropriated. Under section 204 of the 2016 Act, there is an obligation to make payment of compensation for interference with any such matters.

Compulsory Purchase

- 2.12 Under s239 of the Highways Act 1980, Portsmouth City Council may use its compulsory purchase powers to acquire land for the purposes of the construction of a highway. If the City Council decide to use these powers, they must follow the statutory process set down in the Acquisition of Land Act 1981.
- 2.13 The main benefit of the use of compulsory purchase for the City Council is the certainty of being able to obtain vacant possession. Once the Order is confirmed, and the legal challenge period has passed, Notices can be served, and a date for vacant possession is fixed. Despite the relatively long process for making and confirming an Order, use of an Order may also have benefits in terms of securing a site within a shorter amount of time than by the other two methods set out above.
- 2.14 The benefits for property owners are that there is a clearly defined statutory system for their objections to be heard prior to confirmation, and a statutory framework for compensation for their losses once the Order is confirmed.
- 2.15 The potential difficulties in the use of compulsory purchase include the time taken to conclude the statutory process, the expense of the making and confirmation of a compulsory purchase order, and the level of uncertainty which exists until the order is actually confirmed.

3. Application

- 3.1 As has been discussed above, a combination of all the methods will be appropriate for the acquisition of the entire site required for the new City Centre Road.
- 3.2 Prior to acquiring any land, it is vital to have a schedule showing a comprehensive list of all property interests within the development site.
- 3.3 The first stage of the land acquisition process would be to make a record of all the property interests, which are owned or controlled by the City Council.
- 3.4 The City Council has produced a plan detailing property and land already within its ownership as well as land which is Highway and which will remain Highway following the completion of the City Centre Road. This land does not need to be acquired if it will remain as Highway.

Acquisition using Landlord & Tenant powers

- 3.5 The next step in the land acquisition process is to examine land where the City Council have an interest to see whether there are any inferior property interests which could be acquired using landlord and tenant provisions
- 3.6 If any interests are found which meet these criteria, then a schedule can be drawn up of when relevant notices need to be served in order to provide vacant possession when required. It may also be appropriate to notify those affected in the early stages that this is what their landlord intends.

Acquisition by Agreement

- 3.7 This is the preferred method of acquisition.
- 3.8 The City Council will need to identify any property interests within the site that are on the market. If property interests are on the market, and can be acquired at a reasonable cost, then they should be acquired. It may be possible to enter into conditional contracts or take options in order to secure the property interest rather than an outright purchase at an early stage.
- 3.9 The remainder of the interests within the site should be contacted in order to initiate attempts to acquire by agreement. This process can obviously be prioritised depending on the type of interest held. It should be recognised that there may be more than one property interest in some properties, and that the acquisition by agreement of a superior interest may allow the determination of an inferior interest using landlord and tenant powers.
- 3.10 At an early stage a 'stock letter' should be sent to all affected parties initiating contact and explaining the City Councils intentions to negotiate acquisitions by agreement. This process of regular correspondence should be continued throughout the duration of the project.

Small Investment Owners, Owner occupiers and large space users

- 3.11 The City Council will put together a schedule showing available relocation properties within the local area including all of the various land uses which are within the development site. This schedule needs to be updated regularly throughout the entire land acquisition process.
- 3.12 This schedule will provide the basis of negotiations with occupiers to purchase their interests. It should provide a useful information source for all those who are affected by the scheme in their attempts to find relocation premises. This will significantly reduce the risk of businesses having to extinguish due to their inability to find relocation premises, and assist in achieving continuous trading for relocating businesses.
- 3.13 The City Council should work with the affected occupiers to identify appropriate relocation opportunities and be prepared to indemnify occupiers for the reasonable costs of acquiring and holding relocation properties, such as agents or legal fees.
- 3.14 The main concern of small investment owners will be to obtain the right value for their interest. If agreement can be reached on this value, it is likely that a deal can be agreed.
- 3.15 Owner occupiers are likely to have two main concerns, achieving the appropriate value for their property interest, and finding appropriate relocation premises. If both of these issues can be resolved, it is likely that a deal can be agreed. The owner-occupier is likely to reserve their rights to claim disturbance compensation, which is difficult to assess at this early stage.
- 3.16 The main concern of a large or unusual space occupier is likely to be finding appropriate relocation premises. If these can be found, it is likely that agreement can be reached more easily on issues of the value of the property interest and disturbance compensation. Early discussion with these occupiers is particularly important in order to avoid businesses extinguishing or ceasing trading for a short time whilst relocation takes place.

Leaseholders and occupiers

- 3.17 The main concerns of these occupiers will be finding appropriate relocation premises. The City Council will work with the affected occupiers to identify appropriate relocation opportunities and be prepared to indemnify occupiers for the reasonable costs of acquiring and holding relocation properties. The schedule of available property discussed at paragraph 3.11 above will be very useful in these discussions.
- 3.18 Once appropriate relocation premises have been identified, it is more likely that agreement can be reached on any other costs incurred.

Appropriation

- 3.19 To enable site assembly to be achieved for the City Centre Road, it will be necessary for the City Council to appropriate for highway use certain land and interests it currently holds, within the proposed site area, for other statutory purposes, together with any land it acquires (whether by agreement or compulsorily) for the scheme.
- 3.20 It is also necessary for the City Council to authorise the use of powers contained in section 203 of the Housing and Planning Act 2016 to override easements, rights and other adverse

matters burdening the land, subject to the payment of compensation under section 204 of that Act.

Acquisition by Compulsory Purchase

- 3.21 Compulsory purchase forms the third process of acquisition.
- 3.22 Compulsory purchase is often seen as a last resort by acquiring authorities, to be used only when all other options have failed. It should never be seen as a first option.
- 3.23 Government guidance supports the use of compulsory purchase to secure highways schemes. It recognises that, due to the time taken to make and confirm a compulsory purchase order, it may be appropriate to run the compulsory purchase process in parallel with other efforts to acquire interests in property. This also demonstrates the seriousness of the City Council, and can help to move negotiations forward.
- 3.24 Therefore, whilst the City Council explores all reasonable options for acquiring the necessary land as set out above, the City Council will make preparations to make a compulsory purchase order to facilitate the new link road. Negotiations to acquire by agreement will continue throughout this process.

4. Conclusions

- 4.1 The City Council will use their landlord and tenant powers where appropriate to acquire control of property interests required for the City Centre Road.
- 4.2 Where property interests are available on the market at present, the City Council will make reasonable attempts to acquire them by agreement.
- 4.3 The City Council will make reasonable attempts to acquire any remaining property interests by agreement.
- 4.4 The city council will prepare and maintain a schedule of all available property for relocation. They will work with affected occupiers to identify and secure relocation property where appropriate.
- 4.5 The city council is prepared to consider use of its compulsory purchase powers to acquire property interests required for the City Centre Road.
- 4.6 Anyone who is potentially affected by the scheme, or has questions concerning land assembly, should be directed to;

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